


IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ENDO PHARMACEUTICALS INC. and)	
PENWEST PHARMACEUTICALS CO.,)	
)	
Plaintiffs,)	
)	C.A. No. 07-731
v.)	
)	
IMPAX LABORATORIES, INC.,)	
)	
Defendant.)	

**PLAINTIFFS' MOTION FOR
EXPEDITED DECLARATORY JUDGMENT RELIEF**

Pursuant to Federal Rule of Civil Procedure 57, Plaintiffs Endo Pharmaceuticals Inc. and Penwest Pharmaceuticals Co. hereby move this Court for expedited declaratory judgment relief in the form of the attached Order. The grounds for this Motion are fully set forth in the accompanying Opening Brief.

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November 20, 2007

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 20, 2007 I electronically filed the foregoing with the Clerk of the Court using CM/ECF.


I further certify that true and correct copies of the foregoing were caused to be served on November 20, 2007 upon the following individuals in the manner indicated:

VIA HAND DELIVERY

Impax Laboratories, Inc.
c/o The Prentice-Hall Corp. Systems, Inc.
2711 Centerville Road
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Wilmington, DE 19808

VIA ELECTRONIC MAIL

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ORDER

AND NOW, this ____ day of _____, 2007, upon consideration of Plaintiffs' Motion for Expedited Declaratory Judgment Relief, and any response thereto, IT IS HEREBY ORDERED that:

(1) Plaintiffs' motion is GRANTED;

(2) With respect to Count I of the Complaint, the Court declares that:

A. Impax's Paragraph IV Notices are null, void and without legal effect, and Impax was not entitled to trigger the ANDA patent litigation process with respect to United States Patent No. 7,276,250 ("the '250 patent"), United States Patent No. 5,662,933 ("the '933 patent"), or United States Patent No. 5,958,456 ("the '456 patent");

B. This Court has no subject matter jurisdiction over claims between Plaintiffs and Impax regarding infringement of the '250, '933 or '456 patents because the Paragraph IV Notices served by Impax are null, void and without legal effect;

C. The Paragraph IV Notices served by Impax did not commence the 45-day period for filing a patent infringement action pursuant to 21 U.S.C. § 355(j)(5)(B)(iii); and

D. If and when the FDA accepts Impax's ANDA for substantive review, Impax must submit and serve on Endo and Penwest at that time new Paragraph IV Certifications and Notices pursuant to 21 U.S.C. § 355(j)(2)(A)(vii).

(3) In light of the above declarations, Counts II and III of the Complaint are dismissed without prejudice as moot.

BY THE COURT:

J.